

Omnibus Law

Legal Insight

Job Creation Act: Implementing Regulation on Agricultural (Plantation) Sector

Following the enactment of Law No. 11 of 2020 on Job Creation (also known as the "Job Creation Act"), the government has enacted Government Regulation No. 26 of 2021 ("GR 26/2021") on 2 February 2021 in order to provide clear guidelines and direction for businesses in the agricultural sector which serves as an implementing regulation to Law Number 39 of 2014 on Agriculture ("Law 39/2014") as amended by the Job Creation Act.

Subsector: Plantations

Plantations are a promising industry in Indonesia which has a significant impact on the state income. According to the Indonesian Statistics Board, the plantation sector has contributed Rp. 163.49 trillion to the state income or equal to 28.59% of the gross domestic income in Q3 of 2020. Further, for the period January – October 2020, the export of plantation commodities (cacao, rubber, CPO, etc.) reached Rp 359.5 trillion, an increase of 11.6% over the same period in 2019. Considering that this subsector has a major role for the state, the Indonesian government has provided some facilitations and regulations to attract domestic or foreign investors to engaging in this business in Indonesia.

Minimum and Maximum Plantation Areas

GR 26/2021 sets maximum and minimum areas for the use of land for plantation business that apply to certain strategic plantation commodities:

- 1) A maximum area for:
 - a. palm oil plantations of 100,000 hectares;
 - b. coconut plantations of 35,000 hectares;
 - c. rubber plantations of 23,000 hectares;
 - d. cocoa plantations of 13,000 hectares;
 - e. coffee plantations of 13,000 hectares;
 - f. sugar cane plantations of 125,000 hectares;
 - g. tea plantations of 14,000 hectares; and
 - h. tobacco plantations of 5,000 hectares,
- 2) For minimum area, the limit is set for the plantation company which carries out the business of Plantation Plant cultivation which is according to the characteristics and its characteristics are integrated with the plantation product processing business. The areas are being set to a minimum area for:
 - a. palm oil plantation of 6,000 hectares;
 - b. sugar cane plantations of 2,000 hectares; and
 - c. tea plantations of 600 hectares;

is applicable to each plantation company nationwide. This provision was applied differently under Ministry of Agriculture Regulation No. 98/PERMENtan/OT.140/9/2013 as amended several times and lastly amended by Minister of Agriculture Regulation No. 21/PERMENtan/KB.410/6/ ("MoA Reg 98/2013"), which provided the same maximum areas but applied them to company groups rather than individual companies.

At the implementation level, however, the ministry of agriculture has not yet issued a new regulation to replace the similar provision in MoA Reg 98/2013 to align with GR 26/2021. This may lead to different interpretation in the field on the subject of maximum areas.

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which must be reached by each plantation company, failing which, the plantation company may enter into a partnership (*kemitraan*). In conducting the partnership, the plantation company must have a minimum of 20% of the plantation area.

A plantation company that violates the abovementioned provisions will be subject to administrative sanctions in the form of:

- a. written warning;
- b. penalty. GR 26/2021 provides penalty formulas for violations of the maximum and minimum areas:
 - i. the penalty for exceeding the maximum area is calculated as follows: excess area beyond the maximum land area (per hectare) x sales value of taxed object x 2
 - ii. the penalty for the shortfall from the minimum area is calculated as follows: shortfall in land area (per hectare) x sales value of taxed object x 2
- c. revocation of business license.

Notwithstanding the above provisions, GR 26/2021 provides an exception to plantation companies that were using the land for plantation business prior to the issuance of GR 26/2021, are exempted from the maximum area and the minimum area as referred above. In this regard, existing plantation companies which have already engaged in plantation business activities prior to the GR 26/2021, should not be subject to the maximum and minimum areas and sanctions.

Plasma Plantation Obligation, still Required?

Since 2007, plantation companies are mandated to establish partnership with the plantation community or farm smallholder. This activities which also known as plasma plantation obligation were made to benefit surrounding local smallholder from plantation companies. This obligation is continued to be enforced by Law 39/2014 that also obliges plantation companies to facilitate community plantation with the local community in a minimum of 20% of the land area managed by the plantation company ("Facilities").

It is worth highlighting that GR 26/2021 has ease the requirements such Facilities by narrowing down the criteria plantation company to carry out the Facilities. In this matter, this obligation shall apply to plantation company possessing cultivation business permit which all or part of the land originates from (i) other use areas (*area penggunaan lain* or "APL") that are outside the right to cultivate (*hak guna usaha* or "HGU"); and/or (ii) areas originating from the release of forest areas, the plantation company is obliged to facilitate the development of local community plantations, covering an area equal to 20% of the land area.

The development facilities for the surrounding community's plantations must be implemented no later than 3 years after the land for the plantation business is granted an HGU.

The abovementioned Facilities are granted for members of the surrounding community who are members of a plantation commodity-based planters' institution in the form of:

- a. groups of smallholders (*kelompok tani*);
- b. association of groups of smallholders (*gabungan kelompok tani*);
- c. smallholder economic institutions (*lembaga ekonomi petani*); and/or
- d. cooperatives.

The Facilities may be conducted through credit patterns (*pola kredit*), profit sharing patterns (*pola bagi hasil*), other forms of funding agreed by the parties (*bentuk pendanaan lain yang disepakati para pihak*), and/or other forms of partnership all of which must be embodied in cooperation agreements. The Facilities must be implemented through the following stages:

- a. preparation;
- b. implementation; and
- c. financing.

However, further provisions related to the patterns and form of the Facilities and the stages of the Facilities will be regulated in a Ministerial Regulation which has not been issued to date. The plantation companies are also obliged to submit a report on the facilitation of the development of community plantations to the business license issuer in accordance with its authority at least once a year.

Any plantation companies that do not fulfill the plasma obligation requirements and/or the obligation to report on the facilitation of the development of the surrounding community's plantation will be subject to administrative sanctions, in the form of: penalties, temporary suspension, and/or revocation of business license.

GR 26/ 2021 provides a formula to calculate the penalty for the failure to fulfill the 20% plasma obligation as set below:

$$\text{Penalty} = \text{LA} \times \text{BPK}$$

LA = the total cultivated area or equal to 20% of unit capacity of the plantation crops processing mill

BPK = per hectarage cost for plantation development, i.e. land clearing and planting

Other Subsectors

In addition to the plantation subsector, we also highlight key provisions of other subsectors under GR 26/2021:

1) Food Crops Subsector

Every person is prohibited from converting land that has been designated as agricultural land for food crops, save for the public interest and/or national strategic projects. However, the conversion of cultivated land for the public interest and/or national strategic projects may only be done with certain conditions and requirements in accordance with the laws and regulations, and if the agricultural land has a complete irrigation network it is obligatory to maintain the function of the complete irrigation network.

2) Horticulture Subsector

Horticulture business activity is carried out by prioritizing the use of horticultural facilities, which consist of:

- a. quality seeds;
- b. fertilizer that is appropriate and environmentally friendly;

- c. growth regulator that is appropriate and environmentally friendly;
- d. material for controlling plant pest that is environmentally friendly; and
- e. tools and machinery that support horticulture.

Every person that distributes horticultural facilities that do not meet the quality standards or the minimum technical requirements will be subject to administrative sanctions.

3) Livestock and Animal Health Subsector

GR 26/2021 is intended as the basis for designating land as common grazing areas (*kawasan penggembalaan umum*), which can be land from:

- a. grazing areas;
- b. former land for mining;
- c. convertible production forests; or
- d. undeveloped plantation land,

in accordance with the laws and regulations.

Pending Ministerial Regulations

There are several provisions in GR 26/2021 that for which further ministerial regulations are required, though GR 26/2021 does not set a deadline for the ministerial regulations to be issued. However, in the event that the GR 26/2021 provides a choice of not regulating, is incomplete or unclear, and/or in the event of government stagnation, the minister may use his discretion to overcome the problem in the implementation of government affairs in the agricultural sector.

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